IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 762 OF 2007
IN
CRIMINAL APPEAL NO. 652 OF 2004

RAFIK BABU SHAIKH .. APPLICANT

Vs.

THE STATE OF MAHARASHTRA .. RESPONDENT

Mr. Shekhar A. Ingawale for applicant

Mr. A. R. Patil, APP

CORAM: SMT. RANJANA DESAI &

SMT. R. S. DALVI, JJ.

DATED: 21st August, 2007

P.C.

1. Applicant is original accused 2 in Sessions Case No. 135 of 2001. He was tried in the said case along with 2 others for offences punishable under Sections 302, 201 and 404 read with Section 34 and under Section 120-B of the Indian Penal Code ("I.P.C." for short). By judgment and order dated 4/3/2004 the learned Sessions Judge convicted the appellant along with two others for the offence punishable under Section 302 read with Section 34 of the I.P.C. and sentenced each of the accused to suffer R.I. for life and to pay a fine of Rs.7,500/-, in default to suffer R.I. for three years. He was also convicted along with others for the offence punishable under Section 201 read with Section 34 of the I.P.C. And sentenced to suffer R.I. For three years and to pay a fine of Rs.1,000/- in

default to suffer R.I. For one year. He was acquitted of offence under Section 404 read with Section 34 of the I.P.C. The substantive sentences were to run concurrently. Appeal preferred by the applicant challenging the said judgment and order is admitted by this court. We are dealing with his bail application.

2. We have heard Shri Ingawale, the learned counsel appearing for the applicant. He submitted that there is no direct evidence in this case. The prosecution case rests on circumstantial evidence and circumstantial evidence is not strong enough to rope in the applicant. The chain of circumstances is not complete. He submitted that barring alleged recovery of rope and recovery of ornaments, no other circumstances are alleged against the applicant. He submitted that according to the prosecution the applicant had kept the ornaments of the deceased with one Damodar Gade. He is said to have recovered the ornaments from Damodar Gade's house. However, the prosecution has not examined Damodar Gade. This makes the prosecution story suspect. The learned counsel pointed out that the applicant is in custody for about seven years. In the circumstances, looking to the state of evidence against him he may be released on bail.

3. Bhalchandra Phandnis (PW 2g) father of the deceased has stated that the applicant and accused 3 are the friends of accused 1 and the rickshaw owned by the applicant was engaged for carrying the bakery articles of accused 1. The association of the applicant with the other accused is, therefore, established.

4. The case of the prosecution is that on 23/12/2000 accused 1 Shantanu, the husband of deceased Supriya took her and their daughter Mrinal in a car from her

maternal home to Shamgaonghat and committed her murder with the help of the applicant and accused 3 Deepak Patil. Medical evidence states that the cause of death was asphyxia due to strangulation. There were ligature marks on the neck of the deceased. The ornaments worn by her were found to be missing. The wife of the applicant, Nilofar was arraigned as accused 4. However, she could not be tried along with the other accused because she absconded.

5. So far as the applicant is concerned, the major piece of evidence against him is recovery of ornaments. PW 3 Bhagyashri the mother of the deceased has said that when the deceased left the house with accused 1, she was wearing ornaments. PW 30 PSI Mhase in his evidence has stated that at the instance of the applicant ornaments of the deceased were recovered from his neighbour Damodar Gade. Memorandum Exh.85 and panchnama Exh.86 disclosed this. PW 3 Bhagyashri has identified the said ornaments as the ornaments belonging to the deceased and worn by her while leaving the house with accused 1. Vasant Khandelwal (PW 5) and Makarand Mukhedkar (PW 9) the jewellers support this case of the prosecution. The fact that the neighbour of the applicant, Damodar Gade was not examined does not give any set back to the prosecution story. PW 4 Shankar Jagdale, the pancha witness and PW 22 Satish Shete the photographer who took photographs of the ornaments have also supported this prosecution case.

6. The prosecution has also examined PW 1 Pramod Sheth (PW 1), the Manager of Dapoli Co-op. Bank Ltd. He produced gold ornaments before P.I. Mhase and stated that they were pledged with the bank by one lady to take loan of

Rs.14,200/- on 26/12/2000. He identified Nilofar accused 4 the wife of the applicant as the same lady who had pledged the ornaments. There is also a discovery of nylon rope at the instance of the applicant.

7. Considering all this evidence, we are of the opinion, that prima facie the prosecution has made out a case against the applicant. Prima facie it appears that there is evidence against the applicant which connects him with the murder. Hence he cannot be released on bail. His bail application is rejected.

The hearing of the appeal is expedited.

JUDGE.

JUDGE